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IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

NO. 83-1463

MIRIAM BILLINGS LEDESMA,
Petitioner
v.

STATE OF GEORGIA
Respondent

**PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA**

REPLY BRIEF OF PETITIONER

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QUESTIONS PRESENTED

1) Whether OCGA 16-14-7(f) facially violates the Fourth and Fourteenth Amendments to the United States Constitution because it delegates to the police officers executing a search warrant unbridled discretion to search for and seize anything they choose to seize and whether there exists any exception to the Fourth and Fourteenth Amendments that authorizes the seizure of personal papers without a specific warrant or probable cause.

2) When evidence is seized pursuant to search warrants and where the issuing magistrate testifies that all the search warrants were based upon the wiretaps, alleged to be illegal, does the Fourth Amendment require that the validity of the wiretaps be established.

3) Whether the Petitioner was denied a full and fair opportunity to litigate her Fourth Amendment claims by allowing the state to forego its burden of proof on the searches and seizures, by not requiring the state to make the search warrants and the supporting documentation part of the record and by invoking the theory of collateral estoppel even though a previous hearing on the September 14, 1982 search was in a different case, involved only one defendant and did not establish or even mention how the items admitted here were seized.

4) Whether the Fourth and Fifth Amendments permit, through any good faith exception or otherwise, a search subsequent to a warrantless arrest that is based only upon a teletype saying the defendant was "wanted" for questioning

where the arresting police knew there was no warrant, no pending charges, nor probable cause to arrest, and whether the subsequent search was legal.

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I. The decision below, upholding general searches and seizures involving numerous "private papers" conflicts with decisions of this Court and the facial attack on the Georgia statute is an important question of constitutional law which has not been but should be settled by this Court. 2

II. The decision of the court below in failing to suppress evidence seized from all the search warrants in this case, which were all based on admittedly illegal wiretaps, is in conflict with decisions of this Court and the Fourth Amendment as so far departs from the usual course of judicial proceedings as to call for an exercise of this Court's discretion. 3

III. This Court should grant certiorari to ensure that lower courts follow the mandates of the decisions of this court regarding the state's duty to provide a full and fair opportunity to litigate Fourth Amendment claims. 5

V

IV. This Court should grant certiorari to resolve conflicts with the lower courts that continue to erode the Fourth Amendment's proscription against warrantless searches and seizures. 6

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IN THE SUPREME COURT
OF THE UNITED STATES
October term, 1983

No. 83-1463

MIRIAM BILLINGS LEDESMA,

Petitioner

v.

STATE OF GEORGIA,

Respondent

REPLY BRIEF OF PETITIONER ON
PETITION FOR A WRIT OF CERTIORARI
TO THE

SUPREME COURT OF GEORGIA

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Georgia entered on January 5, 1984, affirming the Petitioner's conviction for conspiracy to sell cocaine.

REASONS FOR ALLOWING THE WRIT

I. THE SEIZURE OF PRIVATE PAPERS HERE
CLEARLY VIOLATES THE FOURTH AMENDMENT.

The state simply mistates the facts of this case in asserting, without any citation to the record, that the Petitioner has conceded that the personal papers seized here could have been seized pursuant to OCGA 16-14-7(f), citing Ledesma v. State, 251 Ga. 885,891 (1983). This is a fiction. The Petitioner filed pre-trial motions attacking the constitutionality of this statute (R126,127). The trial court overruled the motion (M72,73), and allowed the evidence in at trial over objection (T 285,286). The state conceded at trial that the personal papers were seized pursuant to OCGA 16-14-7(f) (T259). But the Petitioner was not prosecuted under OCGA 16-14-1 et seq., the RICO statute. The Petitioner argued that since

the case was not prosecuted under the RICO statute the state should not be allowed to rely on the statute at all.

The Petitioner has therefor shown, and as the Supreme Court of Georgia conceded in its decision in the case here, that the question of the constitutionality of the seizure of personal papers here under OCGA 16-14-7(f) is indistinguishable from and controlled by Waller v. State, 251 Ga. 124, cert granted ____ U.S. ____, Case nos. 83-321, 322 (11/7/83).

II. ALL THE SEARCH WARRANTS IN THIS CASE WERE BASED ON ADMITTEDLY ILLEGAL WIRETAPS.

The state has not even addressed the Petitioner's contention here that all the search warrants were based on illegal wiretaps. At trial the state abandoned any attempt to establish the validity of the

first two of the five sets of wiretaps (T210). The trial court specifically declined to rule on the first two sets of wiretaps based on the state's assertion they would not introduce the wiretaps into evidence (T211). But the state also conceded, and the records shows, that the subsequent wiretaps, which were admitted, were the fruit of the first two wiretaps (T214). The judge who issued the search warrants in this case testified that he relied on all the wiretaps in authorizing the search warrants (T259,262). Two of the affidavits in support of the search warrants signed by the officers specifically cited the wiretaps to establish probable cause. Even the Georgia Supreme Court found here that: "It is not disputed that electronic surveillance was used to gather information which, in part, established probable cause for the warrants

used to execute these searches." Ledesma,
supra, at 889. Nevertheless that court
ignored the fact that the searches were
the fruits of the wiretaps and found that:
"As Appellants concede no wiretap evidence
was admitted at trial, we find no error."
id. at 889.

Therefore this issue is controlled by
Wong Sung v. United States, 371 U.S. 471
83 S.Ct. 407 (1963), in that all the
evidence seized pursuant to the search
warrants were the fruit of the first two
wiretaps for which the state abandoned its
burden of proof. Cf. Cox v. State, 152 Ga.
App. 453 (1979).

III. The PETITIONER HAS PROPERLY RAISED
THE FULL AND FAIR HEARING ISSUE.

Petitioner has argued at trial, on
direct appeal and in this petition that
she has been denied a full and fair opp-

ortunity to litigate her Fourth Amendment claims. When the trial court refused to make the state put on any evidence or otherwise prove the legality of the search of Petitioner on September 14, 1982, the Petitioner objected on the grounds that the prior case (See Ledesma v. State, 251 Ga. 487 (1983), did not establish the law of this case and that denying a hearing denied the Petitioners of their rights of confrontation and counsel of choice (M41).

Moreover the prior case did not even mention the seizure of the drug ledger, calculator or tapes which were only admitted in this case.

The Petitioner also argued in the state courts that the state failed to meet its burden of proof by not putting into the record copies of any warrants, affidavits or other supporting documents regarding the searches. Cf. Bland v. State, 141 Ga.

App. 858 (1977).

Therefore the issue of full and fair hearing is properly before this Court and under the authority of Stone v. Powell, 428 U.S. 465, 95 S.Ct. 3037 (1977) the Petitioner has been denied a full and fair opportunity to litigate her Fourth Amendment claims.

IV. THE SEIZURE OF THE PETITIONER'S PERSONAL PAPERS ON 9/14/82 WAS THE PRODUCT OF AN ILLEGAL ARREST, INVENTORY SEARCH AND WEAPONS SEARCH.

The Respondent is correct in asserting that the issue raised herein is the same issued as was raised in Ledesma v. State, 251 Ga. 487 (1983), cert denied, ____ U.S. ____, No. 83-755 1/6/84). However "the denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." United States v. Carver, 260 U.S.

482,490, 43 S.Ct. 181 (1923).

Moreover the previous case did not even mention the seizure of the drug ledger, calculator and tapes. So it could not have established the legality of the seizure of these items especially in light of the fact that the evidence admitted here involved the seizure of personal papers.

CONCLUSION

All the questions presented here have been fully raised in the courts below and present substantial constitutional questions. The state has shown no exceptions to the Fourth Amendment that authorizes the police to conduct massive searches of personal papers. Inasmuch as the personal papers seized here were seized pursuant to Georgia law this case is controlled

by Waller v. Georgia, Case No. 83-321,
cert. granted 11/7/83. For these and the
reasons argued in the original petition
this Court should grant the writ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a
copy of this petition, by mail upon:

Hon. Michael Bowers
Attorney General of Georgia
132 State Judicial Bldg.
40 Capitol Square SW
Atlanta, Georgia 30334

and

Hon. Ben Oehlert
Assistant District Attorney
300 Fulton County Courthouse
136 Pryor St. SW
Atlanta, Georgia 30303

This the ____ day of May, 1984.

J.M. Raffauf